

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1318/JP/2019

निर्धारण वर्ष/Assessment Year: 2011-12

The Income Tax Officer, Ward 2(2) Jaipur.	बनाम Vs.	M/s Elegant Buildhome Pvt. Ltd., D-29, Ashiyana Apartment, Shanti Path, Tilak Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABCE 7528 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Rooni Pal (DCIT)

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)

सुनवाई की तारीख / Date of Hearing : 24/06/2020.

घोषणा की तारीख / Date of Pronouncement : 25/06/2020.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the revenue is directed against the order dated 24/09/2019 of Id. CIT (A)-1, Jaipur for the assessment year 2011-12. The revenue has raised the following grounds of appeal: -

- “ 1. *Whether on the facts and in the circumstances of the case, the Id. CIT(A) was justified in allowing the appeal of the assessee and deleting the addition of Rs. 13,00,000/- made on account of repurchase of flat debited in P&L A/c considering it as a correction entry for 'sales return' on account of cancellation of booking of flat by Divya Goyal whereas it was repurchase not properly accounted for it the relevant F.Y. 2009-10.*
2. *Revenue audit objection was accepted in this case thus it falls under exception clause 10(c) of the Circular 03 of 2018.”*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. The Id DR has

pointed out that initially the assessment was completed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) on 31/10/2013. However, thereafter, in view of the audit objections, the Id. Pr.CIT invoked provisions of Section 263 of the Act and vide order dated 28/03/2016, the original assessment order was set aside on the issue of allowing the claim of deduction on account of resale of the flats earlier sold by the assessee to one Ms. Divya Goyal. The transaction of sale and resale was completed in the A.Y. 2009-10 and 2011-12 respectively, therefore, the claim of sales return for the assessment year under consideration was found to be not in accordance with law pursuant to the revision order passed U/s 263 of the Act. The A.O. has disallowed the said claim on account of sales return. However, the disallowance made by the A.O. was deleted by the Id. CIT(A) on the ground that it is only a mistake of entry in the books of account made by the assessee for the A.Y. 2011-12 in place of A.Y. 2010-11. The Id DR has further submitted that since the assessment order was passed by the A.O. in pursuant to the revision order passed U/s 263 of the Act, therefore, the assessee cannot agitate this issue in these proceedings when the assessee did not challenge the revision order passed U/s 263 of the Act. Hence, the Id DR has contended that when the revision order has attained the finality then the assessee cannot challenge the assessment order passed in pursuant to the revision order. In support of her contention, she has relied upon the decision of the Hon'ble Bombay High Court in the case of Herdillia

Chemicals Ltd. Vs CIT 221 ITR 194 (Bom). The Id DR has further contended that even otherwise when the transaction of sales return was completed in the A.Y. 2010-11 then the same cannot be allowed for the assessment year under consideration.

3. On the other hand, the Id AR of the assessee has submitted that the Id. Pr.CIT while passing the revision order U/s 263 of the Act has not given a concluding finding but the order of the A.O. was set aside and the matter was remanded to the record of the A.O. for deciding the same afresh after examining the claim of deduction on account of sales return. Therefore, when no finding was given on the issue by the Id. Pr.CIT while passing the revision order then the issue decided by the A.O. on merits in the assessment proceedings in pursuant to the revision order is very much open for challenge in the appeal. Thus, the Id AR has submitted that the decision relied upon by the Id DR is not applicable in the facts of the present case. He has further submitted that as far as the transactions of sale of flat to one Ms. Divya Goyal and subsequently due to some dispute and legal proceedings initiated by her, the said flat was repurchased by the assessee on 26/10/2009 but the assessee could not make an entry in the books of account to this effect of the sales return. Therefore, the said entry was made during the assessment year under consideration and it is shown on both side of P&L account being sales return and part of the closing stock. Thus, the Id AR has submitted that there is no revenue effect on account of this entry

for the year under consideration. He has further pointed out that even if the said entry is properly recorded in the A.Y. 2010-11 then the said amount would have been part of the closing stock of this said assessment year and opening stock of the assessment year under consideration. Therefore, showing the said amount under the head sales return will have no impact on the tax liability or income of the assessee. He has supported the finding of the Id. CIT(A).

4. We have considered the rival submissions as well as relevant material on record. As far as the objections of finality of the order passed U/s 263 of the Act and bar against raising the issue by the assessee against the assessment order passed in pursuant to the revision order passed U/s 263 of the Act we note that the Id. Pr.CIT has not given a concluding finding on the issue which was taken up in the proceedings U/s 263 of the Act. The A.O. while passing the impugned assessment order in pursuant to the revision order has reproduced the relevant part of the revision order at page No. 1 of the assessment order as under:

"During the course of assessment proceedings, AO did not make any enquiry to verify as to why the payment made to Ms. Divya Goyal as sales return was debited in the F.Y. 2010-11 whereas the same was actually paid in F.Y. 2009-10 itself. AO also failed to examine whether the amount was claimed in F.Y. 2009-10 or not. Explanation 2' appended to Section 263 of the Income Tax Act prescribes that 'the order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in opinion of the Principal Commissioner the order is

passed without making enquiries or verification which should have been made. It is clear in this case that as mentioned above, the AO did not make enquiry regarding allowability of claim of expenses of Rs. 13,00,000/-, which should have been made by him.

Considering all the facts and circumstances of the case, the assessment order dated 31/10/2013 for 2011-12 passed by AO, is held erroneous in so far as it is prejudicial to the interests of the revenue for the purchase of Section 263 of the IT Act.”

Thus, it is clear that the Id. Pr.CIT in the revision proceedings U/s 263 of the Act has taken up an issue of allowability of claim of sales return of Rs. 13.00 lacs and has observed in the order passed U/s 263 of the Act that the A.O. did not make enquiry regarding the allowability of the claim which should have been made by him. Thus, making a reference to the explanation to Section 263 of the Act, he has held that the order passed by the A.O. without conducting enquiry regarding the claim of deduction on account of sales return of Rs. 13.00 lacs are erroneous and prejudicial to the interests of the revenue. The Id. Pr.CIT, accordingly, set aside the original assessment order passed U/s 143(3) of the Act dated 30/10/2013 and directed the A.O. to make fresh assessment after conducting a proper enquiry regarding the allowability of claim of expenses of Rs. 13.00 lacs. Thus, it is manifest from the record that there was no concluding finding given by the Id. Pr.CIT on the issue of allowability of claim of Rs. 13.00 lacs on account of sales return. Hence, when the A.O. has to take a decision based on the outcome of the enquiry conducted in the proceedings pursuant to the revision order U/s 263

of the Act then the said finding of the A.O. is subjected to challenge in the appeal and non-challenge of the revision order passed U/s 263 of the Act, will not operate as a bar for filing the appeal against the order passed by the A.O. As regards the decision relied upon by the Id DR, the Hon'ble Bombay High Court in the case of Herdillia Chemicals Ltd. Vs CIT (supra) has considered this issue in para 6 to 12 as under:

6. We have carefully considered the above submissions of the learned counsel for the assessee. We, however, do not find any merit in the same because even on a plain reading of the revisional order of the Commissioner passed under section 263, it is obvious that the Commissioner has specifically decided the question whether value of work-in-progress would form part of the capital employed for the purpose of relief under section 80J or not and has categorically held that it will not be so included. This is evident from the discussion contained in paragraphs 4 and 5 of the revisional order of the Commissioner. The following extracts from the said paragraphs are pertinent:

"The first contention of the assessee is that the item of capital works is an asset within the meaning of rule 19A of the Income-tax Rules, 1962. It was stated that the said asset could be treated as an asset not entitled to depreciation within the meaning of rule 19A(2)(ii)/(iii). It was thus argued that the asset in question formed part of the capital employed by the industrial undertaking.

I have carefully considered the matter, and I cannot accept the assessee's view.... In the above sense of the word 'employed' assets not brought into use cannot be treated as assets employed, though they may be owned by the industrial undertaking. For these reasons, I am unable to agree with the assessee's contention in this regard. The assessee's contention is, therefore, rejected."

The Commissioner also decided the second issue which is evident from the discussion contained in paragraph 6 of the order which reads:

"The second submission of the assessee was regarding the reduction of the written down value of the assets by the amount of extra shift allowance made in the earlier years. The ITO had made the allowance for extra shifts without the same being claimed. The AAC had held that the allowance should not be thrust upon the assessee. The assessee's representative thus contended that the written down value could not be reduced by the amount of such allowance till the issue is finalised. I find that the ITO had allowed extra shift allowance in the earlier years and had also reduced the opening written down value of the assets by such allowance made in the past for the purpose of depreciation. He had, however, failed to consider such reduction for the written down value for the purpose of computing the capital employed under

rule 19A of the Income-tax Rules. Since the assets had actually been subjected to extra shift as per the particulars furnished by the assessee itself, the ITO in the earlier assessments was justified in allowing extra shift allowance. *The ITO, therefore, erred in the course of 72-73 assessment in not reducing written down value accordingly for the purpose of relief under section 80J.*" [Emphasis supplied]

7. It is abundantly clear from the above extracts that the Commissioner did decide both the issues raised before him and held in no less clear terms that the ITO had allowed excessive amount under section 80J on both the counts mentioned above. It was only after arriving at such a finding that the Commissioner withdrew the relief under section 80J granted by the ITO and directed him to determine the relief afresh in accordance with law after giving an opportunity to the assessee of being heard in this regard.

8. On a reading of the revisional order of the Commissioner, we have no doubt in our mind that the direction of the Commissioner to the ITO to determine the relief under section 80J after giving an opportunity of being heard to the assessee was only for the purpose of recomputation of the amount of relief under section 80J by reducing the value of work-in-progress from the capital employed as held by him in paragraphs 4 and 5 and by reducing the written down value of the assets by the extra shift allowance allowed in the past as held in para 6 of the revisional order. The direction to the ITO in the operative part of the order cannot be read in isolation. The order of the Commissioner read as a whole makes it abundantly clear that the Commissioner arrived at categorical and definite findings in regard to the contentions of the assessee about inclusion of work-in-progress in the capital employed for the purpose of claiming relief under section 80J and in regard to deductibility of extra shift allowance allowed in the past from the value of fixed assets for the very same purpose and remitted the matter to the ITO merely to perform the ministerial function of recalculating the amount of relief under section 80J.

9. In such a situation, it is extremely difficult on our part to accept the contention of the learned counsel for the assessee that in his revisional order, the Commissioner did not decide the points at issue and left it open to the ITO to examine the same after hearing the assessee. In fact, as stated above, what was left to the ITO was only the ministerial work of recomputing the relief under section 80J, obviously, subject to the findings contained in the order.

10. In our view, reference to and reliance on the operative part of the order without regard to the text of the order and the findings recorded therein is wholly misplaced and improper. To understand the true purport of an order, it has to be read as a whole. The operative part of the order in this case has to be read and understood in the light of the controversy before the Commissioner and the questions decided by him. It cannot be read in isolation from the text of the order and the determination of the questions arising therein by the Commissioner. It is neither proper nor permissible to pick out any part of the order, and in case of remand order the operative part thereof and to read the same without regard to the questions decided therein to support the contention that all issues are left open for determination by the authorities below. The Tribunal, in this case, in our opinion, was right in

holding that the revisional order, wherein a definite finding is recorded on both the points at issue, having become final on account of the failure of the assessee to pursue the statutory remedies provided in the Act against that order, the assessee cannot be allowed to challenge such concluded findings collaterally in an appeal filed against the fresh order passed by the ITO with a view to giving effect to the same.

11. In our opinion, though appeal is maintainable from the order passed by the ITO to give effect to a revisional order or an appellate order, only such issues can be agitated in such appeal which have not attained finality by virtue of earlier orders of the revisional or appellate authorities. It is not open in such an appeal to agitate any point which has already been decided by the revisional or the appellate authorities in their order.

12. In view of the above, we do not find any infirmity in the finding of the Tribunal in the instant case. Accordingly, question No. 1 is answered in the affirmative and in favour of the revenue. On the very same reasoning, question No. 2 is also answered in favour of the revenue. In the facts and circumstances of the case, there shall be no order as to costs.

Thus, it is clear that in the said case, the CIT in the revision order passed U/s 263 of the Act has given a definite finding on both the issues of excess claim of deduction U/s 80J of the Act. Therefore, in the said case, the Id. CIT has finally determined the issue on merits though only computation was left with the A.O. In those facts, the Hon'ble High Court has held that the order passed by the CIT determining the question arising wherein has attained the finality as the assessee did not challenge the said order and therefore, the assessee cannot agitate the same issue in the proceedings arising from the order passed by the A.O. in pursuant to the revision order. Therefore, there is no quarrel on the point that if the Id. CIT in the revision proceedings has decided the issue and determining the dispute then it is not open to the A.O. to decide the said issue but the A.O. has just to give effect to the finding of the Id. CIT and in those circumstances the assessee cannot agitate the said point already decided by the Id. CIT in the revision

proceedings in the appeal filed against the order passed by the A.O pursuant to the revision order.

5. As we have already noted that in the case in hand, the Id. Pr.CIT has not determined the issue while passing the revision order and the matter was simply set aside to the record of the A.O. for determination of the same afresh after conducting a proper enquiry on the issue of allowability of deduction. Hence, the said judgment relied upon by the Id. DR is not applicable in the facts of the present case.

6. As regard the allowability of claim of deduction of Rs. 13.00 lacs on account of sales return for the year under consideration instead of the said claim made in the A.Y. 2010-11 when the transactions of sales return was completed, we find that the Id. CIT(A) has decided this issue in para 3.1.2 as under:

"3.1.2 Determination:

(i) *From the facts of the case, it is seen that the appellant has shown payment of Rs. 13,00,000/- to Ms. Divya Goyal on account of repurchase of the flat as the booking made by Ms. Divya Goyal was cancelled. The AO examined the general entries in the ledger account of Ms. Divya Goyal appearing in the books of the appellant and held that the appellant has wrongly claimed such expenses. The relevant para of the assessment order is reproduced as under:*

"Perusal of profit & loss account, it is noticed that the assessee has debited Rs. 1491689/- on account of purchase and building material expenses in profit & loss account. The assessee is asked to furnish the details of these

expenses. The assessee has filed the details alongwith reply dated 13.05.2013. Perusal of details, it is clear that Rs. 13 lacs are debited on 31.03.2011 on account of payment made to Ms. Divya Goyal. In reply dated 19.08.2013, the assessee stated that payment has made for cancellation of Flat booking to Ms. Divya Goyal. The money was paid to her out of her own money received earlier. Hence, return entry was made in subsequent year when cancellation deed was registered. A copy of her account is available in record which is reproduced as under:-

Elegant Buildhome Pvt. Ltd D-29, Shanti Path, Tilak Nagar Jaipur DIVYA GOYAL Ledger account B-40, Ganesh Marg, Bapu Nagar, Jaipur					
1-Apr-2008 to 31-Mar-2011					
Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-2-2009 Dr	CASH CASH RECD	Receipt	27		3,50,000.00
12-2-2009 Cr	SALES Unit 502, area 720 sqft builtup at b-83	Journal		13,00,000.00	
Dr	SAND DUNE CONSTRUCTION PVT. LTD PAYMENT RECEIVED BY SDCPL	Journal			9,50,000.00
				13,00,000.00	13,00,000.00
26-10-2009 Cr	BANK OF BARODA Cheque Ch. No. 673732	26-10-2009	BANK PAYMENT 05-673732 13,00,000.00 Cr	13,00,000.00	
				13,00,000.00	
	Closing Balance				13,00,000.00
				13,00,000.00	13,00,000.00
1-3-2011 Cr	Opening Balance			13,00,000.00	
31-3-2011 Dr	Sales Return	Journal	27		13,00,000.00
				13,00,000.00	13,00,000.00

From the reply of assessee, it is clear that payment was received from Ms. Divya Goyal/ on 12.02.2009 and same was returned to her on 26.10.2009 i.e. received in FY 2008-09 and returned to her in FY 2009-10. However, the assessee has further claimed payment to her in FY 2010-11 on 31.03.2011, which is wrong. Therefore, the assessee has wrongly debited Rs. 13,00,000/- in profit & loss account for the year under consideration."

(ii) During the appellate proceedings, it was submitted that the appellant is engaged in the business of real estate and sale /

purchase of flats appears in profit and loss account. It was also submitted that Ms. Divya Goyal cancelled the flat booked by her and money paid by her was returned. It was also mentioned that the purchase/sales return of the flat has increased the stock and has not impacted the profit / income of the appellant. Regarding the observation of the AO that further payment was made to Ms. Divya Goyal on 31.01.2011, it was submitted that the amount was initially debited in the account of Ms. Divya Goyal in AY 2010-11 which was later on squared up in AY 2011-12 whereby, the account of Ms. Divya Goyal was credited and sales return/ purchase account was debited. The appellant further submitted that there is a mistake in passing of the entry in sales return in AY 2011-12 in place of AY 2010] 1 but at the same time it was also mentioned that as the sales return has increased the stock of the company, it has not affected the profit/ income. It was submitted that no fresh payment was made to Ms. Divya Goyal on 31.03.2011 and it is only a journal entry. The appellant filed necessary documents in support of its claim.

(iii) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is seen from the facts that the sales return has resulted into increase in stock without affecting the profit of the company. The passing of journal entry on 31.03.2011 has created the doubt regarding payment to Ms. Divya Goyal however, it is only a correction entry to rectify the entry made in AY 2010-11. In view of the explanation submitted by the appellant and as the above entry has not affected the profit / income of the appellant company, there is no justification for such addition. The addition made by the AO is deleted.”

Thus, it is clear that so far as the facts regarding sales of flat to Ms. Divya Goyal and the entries made in the ledger account, the same are not in dispute. The assessee originally sold the flat on 12/02/2009, however,

thereafter due to some disputes and litigation, the said flat was repurchased by the assessee on 26/10/2009 and the consideration of Rs. 13.00 lacs were repaid to the said purchaser Ms. Divya Goyal. Thus, the assessee has already shown the sales for the A.Y. 2009-10, however, in the subsequent assessment year i.e. A.Y. 2010-11, the said transaction of sale was reversed as the assessee has repurchased the flat and it was a sales return happened in the said year. Therefore, even if the assessee would have made correct entry and claimed sales return for the A.Y. 2010-11 then the same would have been part of the closing stock of the said year ending on 31/03/2010 and consequently part of the opening stock of the assessment year under consideration as on 01/04/2010. For the year under consideration instead of taking the said amount as part of the opening stock, the assessee has first time claimed this amount under the head sales return. However, correspondingly the same is claimed to have been part of the closing stock of the year under consideration. Therefore, it is only contra entry in the books and there will be no effect in the P&L account as the assessee has debited amount under the head sales return and at the same time, this is also part of the closing stock as on 31/03/2011. Thus, we find that except the element of profit which would have been claimed as loss in the A.Y. 2010-11, there is no significant or substantial revenue effect for the year under consideration. Even otherwise, if the assessee is paying tax at the maximum marginal rate for the preceeding year as well as for the year under

consideration then it shall have no revenue effect and in case as there is no taxable income for the preceeding year then the said claim of business loss on account of sales return is otherwise eligible for carryforward and is an allowable deduction for the year under consideration. Therefore, in these facts and circumstances of the case, we do not find any error or illegality in the order of the Id. CIT(A), accordingly, we uphold the same.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 25th June, 2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 25/06/2020.

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-The ITO Ward 2(2), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Elegant Buildhome Pvt. Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 1318/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar